HONGKONG & SHANGHAI BANKING CORPORATION (M) TRUSTEES LTD. v. PRESIDENT, MUNICIPALITY OF IPOH

[O.C.J. (MacIntyre J.) July 26, 1965]

[Ipoh — Originating Motion No. 16 of 1964]

Practice and Procedure — Costs — Taxation — Whether costs on higher or lower scale — Appeal against assessment — R.S.C., 1957, O. 59 r. 13.

The applicants had appealed against the assessment by the Municipality of Ipoh of their property whose annual value was assessed at $8,145. The grounds of appeal were that the assessment was excessive and that it was erroneous in law as the holding had been exempted under the provisions of the Town Board Enactment by the Ruler in Council. The appeal was dismissed and the respondent thereupon put in his bill for costs drawn up on the higher scale. On objection by the applicants the registrar referred the matter to the judge for a ruling on whether the bill should be taxed on the higher scale.

Held: in this case the question of the liability of the property to pay rates at all was raised and the implication of a decision on this question would certainly be far in excess of $5,000 and therefore the costs should be taxed on the higher scale.

Cases referred to:—

(1) *Radhakrishnan Ayyar* v. *Sundaraswamier* 49 I.A. 211.

(2) *Andrew Macfarlane & Anor.* v. *Francois Leclaire* 15 E.R. 462.

(3) *Mohamed Hussain & Anor.* v. *Pavadise* [1956] M.L.J. 63.

REFERENCE IN CHAMBERS.

F. C. Arulanandom for the applicants.

Lim Kean Chye for the respondent.

Cur. Adv. Vult.

MacIntyre J.: This is an application by the respondent for leave to tax his solicitors' bill of costs on the higher scale in respect of an abortive appeal brought by the applicants from the decision of the Ipoh Municipal Council by way of originating motion under Order 59 rule 13 of the Rules of the Supreme Court, 1957. The decision appealed against was the confirmation by the Municipal Council of the decision of the assessment objection committee assessing for the purpose of rating the annual value of the applicants' property known as lot 32599 and situate at Gopeng Road in the township of Ipoh at $8,145.

The decision of the Municipal Council was conveyed to the applicants by a letter dated the 10th of December 1964 and by virtue of the provisions of section 41(i) of the Town Boards Enactment the rate payable on that assessment became the rate payable for the year 1965. Two grounds of appeal were preferred but the appeal was dismissed on a preliminary objection raised by the respondent on a question of procedure. Besides, when filing the appeal, the applicants failed to pay into court as required under section 44(i) of the Town Boards Enactment the rate payable for the year of assessment; nor was the rate actually payable for the year 1965 mentioned anywhere on the record. The rates paid for the years 1963 and 1964 are stated in the affidavit of Leonard James Peace dated the 19th of December 1964 and filed in support of the originating motion as being $1,772.46 and $1,710.46 respectively. However, at the hearing of this application the submissions were made on the basis that the rate payable for the year of assessment was less than $5,000. Consequently, the point for decision is whether the value of the subject-matter is the amount of the rate payable for the year of assessment or is it the annual value of the property assessed on the basis of the value to the applicants of the right of possession of the property.

In this connection, I was referred to the bill of costs taxed in Ipoh High Court Civil Appeals Nos. 10, 11, 12, 13, 14, 15, 16 and 17 of 1961 against the decision of the Municipal Council in respect of assessment for the purpose of rating. All the bills were taxed on the higher scale although the rate assessed in each case amounted to less than $5,000. However, there is nothing on record to show that the point in question was raised by the parties or considered by the Senior Assistant Registrar.

My attention was also drawn to the model forms of bills of costs in respect of appeals against assessment appearing at page 438 of *Johnson* on Costs (1901 Edition) in which the costs charged are said to be on the higher scale. I am unable to accept mere forms as precedents unless I am shown that the relevant provisions of law governing assessment for rating in England are the same as the provisions of our Town Boards Enactment.

Counsel also cited decisions by the Privy Council in *Radhakrishnan Ayyar* v. *Sundaraswamier* (1) and *Andrew Macfarlane and Anor.* v. *Francois Leclaire,* (2) and urged that the test laid down by those decisions for determining the value of the subject-matter of the dispute are applicable to the instant case. The facts in *Radhakrishnan's* case, *supra,* have no bearing on the present case but in their judgment, their Lordships did mention in passing that "the sum of money actually at stake may not represent the true value. The proceeding may, in many cases, such as a suit for an instalment of rent or under a contract, raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit." Useful as this test might be in determining the value of the subject-matter of a proceeding in respect of rights or liabilities arising out of contracts, it is not, in

my opinion, relevant for the purpose of evaluating the subject-matter of an appeal from a decision regarding assessment of the annual value of a property for the purpose of rating.

Counsel for the applicants contended that the value of a land would be the subject-matter of a dispute only if the question of ownership or title to the land was in issue. In support of this view he cited the judgment in *Mohamed Hussain and Anor.* v. *Pavadise.*[3] In evaluating the subject-matter in the present case, counsel submitted that the question to be answered is what would be the gain for the applicants for the year of assessment if he had succeeded in the appeal. According to him the gain would be the actual amount of the rate he would not have to pay for the year of assessment. Counsel further submitted that the issues in this case were simple and since respondent had not even filed an affidavit in reply, the bill of costs should be taxed on the lower scale. It would, however, appear from the provisions of Order 65 rule 10 of the Rules of the Supreme Court, that in all cases where the value of the subject-matter of an action, suit or proceeding exceeds $5,000, costs shall be allowed on the higher scale unless the amount recovered fell short of that limit.

The grounds of appeal in this case were:

"(1) That the assessment is erroneous in law as the said holding is not rateable, it having been exempted for general assessment and education rates by the Ruler-in-Council on May 14, 1951; and alternatively

(2) That even if the holding is rateable the valuation by the council exceeds the rateable value of the holding."

Now to take the second ground of appeal first.

This must be deemed to be an appeal against the rate payable for the year of assessment since the provisions of the statute under which the appeal is filed regards the rate payable for the year of assessments the subject-matter of the appeal. The proviso to section 44(i) of the Town Boards Enactment reads: "Provided that with the presentation of the petition of appeal there shall be paid into court the amount of the rate appealed against."

The first ground of appeal, however, raises an issue of far reaching consequence which goes beyond any particular year of assessment. I think that the test suggested in the judgment of the Privy Council in *Andrew Macfarlane* v. *Francois Leclaire, supra,* applies. In that case their Lordships observed: "that in determining the question of the value of the subject-matter in dispute upon which the right of appeal depended, the proper course was to look at the judgment as to the extent that it affected the interested party prejudiced by it and seeking to relieve himself from it by appeal."

The extent to which the applicants herein are prejudiced by the decision of the Municipal Council is that a holding claimed to be exempt from rating has been declared to be rateable. The financial implication of this decision is incalculable and is certainly prejudicial to the applicants to an extent far in excess of $5,000.

I therefore direct the bill of costs to be taxed on the higher scale.

Order accordingly.

Solicitors: *F. Arulanandon; Lim Cheng Ean & Co.*

NG SEE MOI v. GOVERNMENT OF THE FEDERATION OF MALAYA & ORS.

[O.C.J. (MacIntyre J.) August 2, 1965]

[Ipoh — Civil Suit No. 35 of 1965]

Practice and Procedure — Parties — Application to amend name of defendant — Correction of misnomer — R.S.C. 1957, O. 16 r. 11.

In this case an action had been brought against *inter alia* the Government of the Federation of Malaya. An application was made to amend the name of the defendant to that of the Government of Malaysia. Counsel for the defendant objected on the ground that the claim against the Government had been barred by the Public Authorities Protection Ordinance, 1948. The question for consideration was whether the proposed amendment amounted to an application to correct a misnomer or to substitute a new defendant.

Held: it was quite clear that in this case the defendant had been described as the Government of the Federation of Malaya through sheer inadvertence and therefore the application to amend should be allowed.

Cases referred to:—

(1) *Challinor* v. *Roder & Ors.* (1885), 1 T.L.R. 527.

(2) *W. Hill & Son* v. *Tannerhill* [1944] 1 K.B. 472.

APPLICATION.

C. Navaretnam for the applicant.

Pawan Ahmad bin Ibrahim Rashid (Legal Adviser, Perak) for the respondents.

MacIntyre J.: This is an application to amend the name of the 1st defendant from that of the Government of the Federation of Malaya to that of the Government of the Federation of Malaysia.

The application is made under Order 16 rule 11 of the Rules of the Supreme Court, 1957.

At the hearing of the summons, the learned legal adviser to the Government of Perak appearing on behalf of the Attorney-General objected to the application on the ground that the alleged claim against the Government of the Federation of Malaysia is barred by limitation by virtue of the provisions of section 2(a) of the Public Authorities Protection Ordinance of 1948.

Mr. Navaretnam for the plaintiff submitted that the misdescription of the 1st